Greco Family Concrete Co., Inc. *and* Building Material Teamsters Local 282, affiliated with International Brotherhood of Teamsters, AFL–CIO. Case 29–CA–17344

April 29, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND COHEN

Upon a charge filed by the Union on May 12, 1993, the General Counsel of the National Labor Relations Board issued a complaint on June 25, 1993, against Greco Family Concrete Co., Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On March 22, 1994, the General Counsel filed a Motion for Summary Judgment with the Board. On March 24, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated February 10, 1994, notified the Respondent that unless an answer was received by February 24, 1994, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New York corporation, with an office and place of business at 87-13 Rockaway Boulevard, Ozone Park, New York, has been engaged in providing readi-mix concrete to contractors in the construction industry and directly to homeowners. During the year ending June 25, 1993, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of $500,000 from the sale of concrete directly to homeowners and purchased and received at its Ozone Park facility concrete, cement, gravel, and other products, goods, and materials valued in excess of $50,000 directly from points outside the State of New York or from other enterprises located within the State of New York, each of which other enterprises had purchased and received the products, goods, and materials directly from points outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All chauffeurs employed by the Respondent out of its Ozone Park facility excluding all other employees, guards and supervisors as described in Section 2(11) of the Act.

Since about 1987, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the Respondent's employees in the unit, and, since that time, the Union has been recognized as such representative by the Respondent. Such recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period from July 1, 1990, to June 30, 1993. This agreement provides, inter alia, that the Respondent make periodic (monthly) payments to the Union's pension, welfare, annuity, and job training funds on behalf of the employees in the unit. At all times since 1987, the Union, by virtue of Section 9(a) of the Act, has been, and is, the exclusive representative of the employees in the unit for the purpose of collective bargaining concerning rates of pay, wages, hours of employment, and other terms and conditions of employment of all unit employees.

On or about April 22, 1993, the Respondent bypassed the Union and dealt directly with its unit employees by meeting with employees to discuss changes in existing health, annuity, and pension plans.

On or about April 22, 1993, the Respondent promised employees improved health, pension, and annuity benefits if they would agree to abandon their membership in and support for the Union and participate in an effort to decertify the Union as the exclusive collective-bargaining representative of the employees in the unit.

On April 23, 1993, the petition in Case 29–RD–745 was filed, seeking to decertify the Union as the exclusive collective-bargaining representative of the unit employees. Since on or about April 22, 1993, this petition was sponsored by and initiated at the behest of the Respondent who urged and directed employees to seek to decertify the Union and otherwise participated in the decertification effort.

CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has interfered with, restrained, and coerced its employees in the exercise of rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By bypassing the Union and dealing directly with its unit employees the Respondent has failed and refused and is failing and refusing to bargain collectively with the representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has bypassed the Union and failed and refused to bargain in good faith, we shall order the Respondent, on request, to bargain with the Union concerning any changes in the unit employees' benefits or any other terms and conditions of employment.

ORDER

The National Labor Relations Board orders that the Respondent, Greco Family Concrete Co., Inc., Ozone Park, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Bypassing the Building Material Teamsters Local 282, affiliated with International Brotherhood of Teamsters, AFL–CIO and dealing directly with its employees in the unit by meeting with employees to discuss changes in existing benefits or other terms and conditions of employment. The unit includes the following employees:

> All chauffeurs employed by the Respondent out of its Ozone Park facility excluding all other employees, guards and supervisors as described in Section 2(11) of the Act.

(b) Promising employees improved benefits if they agree to abandon their membership in or support for the Union and participate in an effort to decertify the Union as the exclusive collective-bargaining representative of the employees in the unit.

(c) Urging, encouraging, or directing employees to seek to decertify the Union, or otherwise sponsoring, initiating, or participating in any decertification effort.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the unit concerning any changes in benefits, or any other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Post at its facility in Ozone Park, New York, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. April 29, 1994

William B. Gould IV,	Chairman
James M. Stephens,	Member
Charles I. Cohen,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT bypass the Building Material Teamsters Local 282, affiliated with International Brotherhood of Teamsters, AFL–CIO and deal directly with our employees in the unit by meeting with employees to discuss changes in existing benefits or other terms and conditions of employment. The unit includes the following employees:

> All chauffeurs employed by us out of our Ozone Park facility excluding all other employees, guards and supervisors as described in Section 2(11) of the Act.

WE WILL NOT promise employees improved benefits on the condition they agree to abandon their membership in or support for the Union and participate in an effort to decertify the Union.

WE WILL NOT urge, encourage, or direct employees to seek to decertify the Union, or otherwise sponsor, initiate, or participate in any decertification effort.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of the employees in the unit concerning any changes in benefits, or any other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

GRECO FAMILY CONCRETE CO., INC.